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7 Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

GAMELINK, INC.,
Plaintiff,
vs.
DVD ADVANTAGE, INC, dba
"GAMELINKK.COM" and DVD
EXPERIENCE, MICHAEL ROSMAN, and
JOHN LEVENTHAL

Case No. C-03-5469-MMC

**STIPULATION FOR SETTLEMENT,
SETTLEMENT AGREEMENT with COURT
RETENTION OF JURISDICTION
PENDING PERFORMANCE OF
SETTLEMENT. ORDER**

Defendants

Plaintiff Gamelink, Inc. and Defendants jointly stipulate as follows:

1. Settlement: The parties have entered into a settlement agreement as follows:

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into between Gamelink, Inc., Inc. ("Gamelink, Inc."), a corporation duly organized and existing under the laws of the state of California and having its executive offices located at 537 Stevenson St., San Francisco, CA 94103-1606 and MICHAEL ROSMAN, DVD ADVANTAGE, INC, dba DVD EXPERIENCE, JON (aka Jonathan) LEVENTHAL, Defendant ("Defendants"), at the following business addresses: 21621 Nordhoff Street, Chatsworth, CA, 91311, 9909 Topanga Cyn. Blvd. PMB 165 Chatsworth, CA, 91311 and Defendant Rosman and for himself, who is the founder and principal of Defendant DVD Advantage, Inc.

1 and who resides at 9301 White Oak Ave., Northridge, CA 91325-2347.

2

3 1. **RECITALS**

4 a. Gamelink, Inc. owns United States federal trademark Registration No.

5 2206576 for the mark GAME LINK in connection with "electronic and

6 online retailing services by means of a global computer network, featuring

7 products for adults, namely, videos, CD-ROMs, films, books, rubber goods

8 and adult toys" in Class 035 registered on the Principal Register

9 maintained by the United States Patent and Trademark Office ("PTO").

10 b. On or about October 1, 2002, Defendant filed for and contracted with a

11 domain name Registrar to use the URL www.gamelinkk.com.

12 c. On or about October 13, 2003, Gamelink warned and in December, 2003

13 Gamelink sued Defendant and others in the U.S.D.C. for the No Dist of

14 California, in action No. C-03-5469-MMC, alleging in its compliant

15 trademark infringement and cybersquatting under ACPA and other counts

16 (the Action) still pending in the Court.

17 d. Pursuant to this Agreement, the parties hereto desire to settle and

18 resolve the controversy resulting from Defendant's adoption and use of

19 the Gamelink -based url.

20

21 2. **AGREEMENT**

22 a. NOW THEREFORE, for good and valuable consideration, the receipt of

23 which is hereby acknowledged, the parties hereto agree as follows:

24 b. REPRESENTATION, PERFORMANCES AND WARRANTIES BY

1 DEFENDANT:

2 i. INJUNCTION and ASSIGNMENT of URL: Defendant represents
3 and warrants that he has stopped using the URL
4 www.gamelinkk.com and will, within 30 days after execution of
5 this agreement, transfer or assign all right, title and interest in
6 said URL to Gamelink. Defendant agrees to cooperate and
7 record any such assignment with the appropriate Registrar on or
8 before execution of this Agreement, and shall forward proof of
9 same to Gamelink, Inc. per the Notice provision contained in this
10 Agreement.

11 ii. PAYMENT: Defendant shall pay to Gamelink, Inc. the sum of
12 \$40,000 as follows:

13 1. Defendant agrees to sign a "webmaster" agreement (the
14 Webmaster Agreement) with Gamelink that allows Plaintiff
15 to do business as a hosted web site under URL
16 www.dvdadvantage.com." The terms and conditions of
17 that Agreement shall control the party's performances
18 thereunder. This Webmaster Agreement contemplates
19 that payment of \$40,000 will accrue to Gamelink, Inc. as
20 part of this Settlement under a License agreement to be
21 executed simultaneously herewith. If said license
22 agreement is not executed this Settlement is void.
23
24 Defendant agrees to make their best efforts to continue to
25

1 market and promote the website known as

2 www.dvdadvantage.com, as follows:

3 a. Continue to solicit customer base (25,000 plus
4 email list) utilizing emails produced by Game Link.
5 b. Maintain other websites that refer business to the
6 Dvdadvantage domain.
7 c. Continue to work on search engine placement.

8 Currently position number 22 on Goggle (Keyword
9 search "adult DVD").

10
11 2. As to the corporate Defendants, they have the right to
12 enter into this agreement and no other person, firm or
13 corporation has any of the rights granted herein so as to
14 interfere with any part of Defendants' performances
15 hereunder.

16 3. **As the inducement for Gamelink, Inc. to enter into the**
17 **Webmaster Agreement with Defendant, The License**
18 Agreement is made exclusive until the payment is made in
19 full.

20 c. **PLAINTIFF PERFORMANCES - DISMISSAL ONLY AFTER PAYMENT**
21 **IN FULL:** After Defendant has **fully performed and** Gamelink has
22 received \$40,000 from Defendant, then Gamelink shall dismiss with
23 prejudice the action (s) pending in the Action. In the mean time,
24 Gamelink will cause the Action to be put in suspension or to otherwise

1 obtain the continuing jurisdiction of the Court to ensure such payments.
2

3 **3. ACKNOWLEDGEMENT OF THE GAMELINK TRADEMARKS AND GAMELINK,**
4 **INC.'S TRADEMARK RIGHTS**

5 a. Defendant acknowledges the validity of the Gamelink, Inc. marks, and
6 that nothing in this Agreement affects Gamelink, Inc.'s ownership of or
7 exclusive rights worldwide in or to the Gamelink, Inc. Marks. Defendant
8 acknowledges Gamelink, Inc. has full rights to the mark and to its
9 GAMELINK URLs.
10

11 b. Defendant represents and warrants that they will not challenge, contest
12 or oppose, either directly or indirectly, the validity of the Gamelink, Inc.
13 Marks or Gamelink, Inc.'s exclusive right to use of the Gamelink, Inc.
14 Licensed Marks or any variations thereof that include the words Game
15 Link , on or in connection with any goods or services

16 **4. PROHIBITED CONDUCT**

17 a. Defendant agrees not to use any of the Gamelink, Inc. Marks, including
18 but not limited to GAMELINK AND GAME LINK, in connection with any
19 business that is done online, on the internet or any its future
20 permutations or formats **whether now known or hereafter invented,**
21 **in any retail or any other context whatsoever** and Defendant further
22 agree not to adopt or use any other Gamelink -based marks.
23

24 **5. CONSTRUCTION**

25 a. If any provisions to this Agreement shall be deemed unlawfully void or

1 unenforceable in whole or in part for any reason, such part hereof shall
2 be deemed separate and shall in no way affect the validity or
3 enforceability of the remainder of the Agreement.

4 **6. No ASSIGNMENT BY Defendant**

5 a. This Agreement may be assigned by Defendant only with the express
6 written consent of Gamelink, Inc. If this agreement is assigned without
7 such written permission any such purported assignment shall be void.

8 This Agreement shall be binding upon and inure to the benefit of
9 Defendant's successors, assigns and affiliates, including parents,
10 subsidiaries, officers, directors, shareholders, agents, representatives,
11 as well as its heirs, successors and assigns.

12 b. As to Gamelink, Inc., this Agreement shall inure to the benefit of
13 Gamelink, Inc.'s successors, assigns and affiliates, including parents,
14 subsidiaries, officers, directors, shareholders, agents, representatives,
15 as well as its heirs, successors and assigns. Gamelink, Inc. may freely
16 assign or transfer this Agreement.

17 **7. FULL CORPORATE and INDIVIDUAL AUTHORITY**

18 a. Each of the parties hereto represents and warrants that: (i) it has the
19 power and authority to execute and deliver this Agreement and to
20 perform its obligations hereunder; and (ii) it has had an adequate
21 opportunity to consult with its and his attorneys prior to entering into the
22 Agreement and has made such an investigation of the facts pertaining
23 to this Agreement and related matters as it deems necessary.

1 8. **GOVERNING LAW**

2 a. The parties hereto agree that this agreement shall be subject to the
3 jurisdiction and venue in the appropriate state and U.S. courts in San
4 Francisco, California and governed, construed, interpreted and enforced
5 under the internal laws of the State of California, irrespective of its
6 choice of law principals.

7 9. **NOTICES** All notices and statements required to be given shall be addressed as
8 follows and served by facsimile and overnight delivery:

9
10 If to Gamelink, Inc.:

11 537 Stevenson St.
12 San Francisco, CA 94103-1606

13
14 Copy to :

15 Phil Green, Esq.
16 Green & Green
17 1000 Fourth Street, Suite 595
18 San Rafael, California 94901
19 (415) 457-8757 (*facsimile*)

20
21
22 If to Defendant:

23 Michael Rosman
24 9301 White Oak Ave.,
25 Northridge, CA 91325-2347

1
2 Copy to:

3 Jeffrey S. Helfer
4 21800 Oxnard St Suite 850
5 Woodland Hills, CA 91367

6

7 10. **Miscellaneous:** This Agreement and its Exhibits represent the entire agreement
8 between the parties. The Agreement may not be modified or waived except in writing
9 and signed by an officer or other authorized representative of each party.

10

11 11. In the event of any action, mediation, litigation, arbitration, suit or proceeding arising
12 from or under the terms, provisions or conditions of this agreement, the prevailing
13 party shall be entitled to recover reasonable attorneys' fees and costs of suit or other
14 proceeding.

15

16 12. No waiver of a breach, failure of any condition, or any right or remedy contained in or
17 granted by the provisions of this Agreement shall be effective unless it is in writing
18 and signed by the party waiving the breach, failure, right, or remedy. No waiver of
19 any breach, failure, right, or remedy shall be deemed a waiver of any other breach,
20 failure, right, or remedy, whether or not similar, nor shall any waiver constitute a
21 continuing waiver unless the writing so specifies.

22

23 13. The parties are independent contractors, and nothing in this Agreement will create
24 any partnership, joint venture, agency, franchise, sales representative, or
25 employment relationship between the parties.

26

27 14. This agreement is expressly conditioned upon the execution of the Webmaster

1 Agreement referred to herein, and all performances by Defendants. This
2 agreement may be executed in any number of counter parts, however, all such
3 counterparts shall constitute but one agreement.

4

5 GAMELINK, INC.,

6 By:

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9 Ilan Bunimovitz , its President

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1 NOTARIAL ACKNOWLEDGEMENT

2 STATE OF CALIFORNIA |

3 } ss.

4 COUNTY OF *Los Angeles* |

5
6 On this 4th day of August in the year 2004 before me Kellie A. Mumford, a Notary
7 Public, State of California, duly commissioned and sworn, personally appeared
8 MICHAEL ROSMAN, personally known to me (or proved to me on the basis of
9 satisfactory evidence) to be the person whose name is subscribed to the within
10 instrument, and acknowledged to me that he executed the same.

11

12 **IN WITNESS WHEREOF** I have hereunto set my hand and affixed my official
13 seal in the City of Woodland Hills, County of Los Angeles

14 _____ on the date set forth above in this certificate.

Kellie A. Mumford

16 Notary Public, State of California



18 My commission expires

1/28/07

20 For Defendants: Michael Rosman and DVD ADVANTAGE, INC, dba DVD

21 EXPERIENCE,

Michael Rosman

25 Michael Rosman

1 NOTARIAL ACKNOWLEDGEMENT

2 STATE OF CALIFORNIA |

3 } ss.

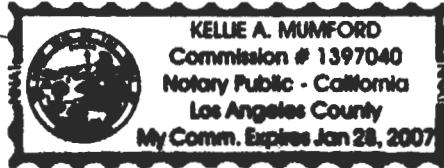
4 COUNTY OF *Los Angeles* |

5
6 On this 4th day of August in the year 2004 before me Kellie A. Mumford a Notary
7 Public, State of California, duly commissioned and sworn, personally appeared Jon
8 (Jonathan) Leventhal, personally known to me (or proved to me on the basis of
9 satisfactory evidence) to be the person whose name is subscribed to the within
10 instrument, and acknowledged to me that he executed the same.

11
12 **IN WITNESS WHEREOF** I have hereunto set my hand and affixed my official
13 seal in the City of Woodland Hills, County of Los Angeles

14 _____ on the date set forth above in this certificate.

15 *Kellie A. Mumford*
16 Notary Public, State of California



17
18 My commission expires 1/28/07

19 For Defendants: Michael Rosman and DVD ADVANTAGE, INC, dba DVD

20 EXPERIENCE,

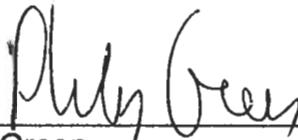
21
22
23
24
25 Jon (Jonathan) Leventhal

1
2 15. The parties agree that this Court make this settlement agreement part of an Order
3 reserving jurisdiction to enforce the Ordered Agreement since the time to perform
4 the agreement is estimated to be tow years. The parties will notify the Court as soon
5 as performance of the terms of settlement are fulfilled so that the Court can dismiss
6 the Action.
7

8 Respectfully submitted,
9 Dated this September 3, 2004

10 Law offices of Green & Green

11 By:

12 
13

14 Philip Green
1000 Fourth St., Suite 595 San Rafael, CA 94901
15 Attorneys for Plaintiff

16
17 ORDER
18

19 The Stipulation for Settlement, Agreement and Proposed Order is hereby
20 adopted by the Court as the Order of Settlement and the parties are ordered to comply
21 with this Order.
22

23 In addition the Court orders:

24 1. The parties are to perform under the settlement agreement. During the time it
25 takes for the terms of the Settlement to be fully performed this Court will retain
jurisdiction to enforce the terms of the Order.

1 takes for the terms of the Settlement to be fully performed this Court will retain
2 jurisdiction to enforce the terms of the Order.

3 2. The Referral of the parties to court Mediator is suspended and the Mediation
4 originally set for July 12, 2004 is postponed indefinitely pending the completion of the
5 terms of the Settlement and this Order.

6 3. Schedule a further Case Management Conference: There shall be a case
7 management conference upon the sooner of _____ or the completion of
8 the terms of the Settlement and filing by the Plaintiff of a Request for Dismissal.

9 4. All prior Orders for Case Management in the matter are [] dismissed []
10 taken off calendar pending the completion of the settlement [] Stayed pending the
11 Settlement and dismissal of this matter.

12 Further Orders:

13 Dated: _____

14 _____
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22
23
24 Maxine M. Chesney, UNITED STATES DISTRICT JUDGE
25

Proof of Service [FRCP 4, 5]

I, HEREBY declare:

I am a citizen of the United States, over 18 years of age and not a party to the within action. I am employed in the County of Marin; my business address is Law Offices of Green & Green Courthouse Square 1000 Fourth Street, Suite 595 San Rafael, California 94901-3118. On September 21, 2004 I served the within:

STIPULATION FOR SETTLEMENT, SETTLEMENT AGREEMENT with COURT RETENTION OF JURISDICTION PENDING PERFORMANCE OF SETTLEMENT, ORDER

on all parties in this action, as addressed below, by causing a true copy thereof to be distributed as follows:

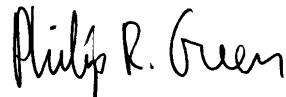
Jeffrey S. Helfer
Kenneth Townsend
The Law Offices of Jeffrey Helfer
21800 Oxnard Street, Suite 850
Woodland Hills, CA 91367

[x] BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] VIA EXPRESS CARRIER: I caused such document to be collected by an agent for Federal Express, Tracking No. [] to be delivered to the office of the stated parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 21, 2004, at San Rafael, California.



Philip Green, Law Offices of Green & Green